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IN THE

Supreme Court of the United States

October Term, 1967

No. 1152

INCORPORATED VILLAGE OF PORT JEFFERSON, ROBERT L. ROBERTSON and ROBERT E. LINK, on behalf of themselves and all others similarly situated owners, taxpayers, voters, residents, electors and citizens, in the Incorporated Village of Port Jefferson, in the Towns of Brookhaven, Smithtown, Huntington, Islip and Babylon and in every Village to be incorporated in said Towns hereafter,

Appellants

against

THE BOARD OF SUPERVISORS OF THE COUNTY OF SUFFOLK, the COUNTY TREASURER OF THE COUNTY OF SUFFOLK, and the RECEIVER OF TAXES OF THE TOWN OF BROOKHAVEN,

Appellees

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

IN THE

Supreme Court of the United States

October Term, 1967

No.

IN THE MATTER OF THE APPLICATION OF PAUL D. WILLCOX, as Village Treasurer of the Incorporated Village of Port Jefferson,

Appellant,

against

THE COUNTY TREASURER OF THE COUNTY OF SUFFOLK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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IN THE

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No.

INCORPORATED VILLAGE OF PORT JEFFERSON, ROBERT L. ROBERTSON and ROBERT E. LINK, on behalf of themselves and all others similarly situated owners, taxpayers, voters, residents, electors and citizens, in the Incorporated Village of Port Jefferson, in the Towns of Brookhaven, Smithtown, Huntington, Islip and Babylon, and in every Village to be incorporated in said Towns hereafter,

Plaintiffs-Appellants,

against

THE BOARD OF SUPERVISORS OF THE COUNTY OF SUFFOLK, the COUNTY TREASURER OF THE COUNTY OF SUFFOLK, and the RECEIVER OF TAXES OF THE TOWN OF BROOKHAVEN,

Defendants-Respondents.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

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IN THE

Supreme Court of the United States

October Term, 1967

No.

INCORPORATED VILLAGE OF PORT JEFFERSON, ROBERT L. ROBERTSON and ROBERT E. LINK, on behalf of themselves and all others similarly situated owners, taxpayers, voters, residents, electors and citizens, in the Incorporated Village of Port Jefferson, in the Towns of Brookhaven, Smithtown, Huntington, Islip and Babylon, and in every Village to be incorporated in said Towns hereafter,

Appellants,

against

THE BOARD OF SUPERVISORS OF THE COUNTY OF SUFFOLK, the COUNTY TREASURER OF THE COUNTY OF SUFFOLK, and the RECEIVER OF TAXES OF THE TOWN OF BROOKHAVEN,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

Appellants appeal from the final judgment of the Court of Appeals of the State of New York, entered on the 28th day of December, 1967, which, having affirmed the order of the Appellate Division, Second Judicial Department, affirming a judgment of the Supreme Court, Suffolk County, State of New York, sustained the constitutionality of Chapter 278 of the Laws of 1958, known as the Suffolk County Charter (referred to hereinafter as the Charter),

sustained the constitutionality of Sections 150 and 153(4) of the County Law of the State of New York, and construed and applied Article XII of the Charter, in this case, and to the prejudice of appellants, in a manner repugnant to the Fourteenth Amendment of the Constitution of the United States. Appellants, therefore, submit this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

Citations to Opinions Below

The opinion of the Supreme Court, Suffolk County (R. 236-250)* is reported in 44 Misc. (2d) 1083, 256 N.Y. 2d 36. The opinion of the Appellate Division, Second Judicial Department (R. 268-271), affirming the judgment of the Supreme Court, Suffolk County, is reported in 26 A.D.2d 700, 272 N.Y.S.2d 617. The decision of the Court of Appeals denying appellants' motion for a preference is reported in 19 N.Y.2d 898, 281 N.Y.S. 2d 90. The decision of the Court of Appeals later affirming the order of the Appellate Division is not yet reported. In affirming the order of the Appellate Division, however, the Court of Appeals delivered no opinion. Its judgment of affirmance is reprinted in Appendix C.

Jurisdiction

This action attacked two statutes of the State of New York, to wit, the Suffolk County Charter and Sections 150 and 153(4) of the County Law, as repugnant to the Federal Constitution. In the legislative apportionment phase of the case, this action was brought for a judgment declaring, and appellants charged in the courts below, that the

* Numbers in parentheses, unless otherwise indicated, refer to pages in the record to be certified and transmitted to this Court and filed with this Statement.

entire Charter, including Sections 201 and 203 thereof, and also Sections 150 and 153(4) of the County Law, were violative of the Fourteenth Amendment to the Constitution of the United States, as well as the Constitution of the State of New York. The grounds asserted were that the Suffolk County Board of Supervisors was unconstitutionally malapportioned by Sections 150 and 153(4) of the County Law and Sections 201 and 203 of the Charter and that the invalidity of Sections 201 and 203 of the Charter rendered wholly invalid the remainder of the Charter. In the police phase of the case, this action was brought also for a judgment further declaring, and appellants asserted below, that, if the Charter was not wholly invalid, Article XII of the Charter, including Sections 1206, 1207 and 1210(a), be declared repugnant to the Fourteenth Amendment to the Constitution of the United States as well as to the Constitution of the State of New York, if Article XII was held and enforced to appellants' disadvantage so as to deny to appellants certain rights relating to the transfer of police functions of the Incorporated Village of Port Jefferson and the exercise of such functions within the territory of said Village.

The Court of Appeals, without opinion, affirmed the order of the Appellate Division affirming the judgment of the lower court, both of which had been adverse to appellants' contentions of unconstitutionality on federal and state constitutional grounds. By its affirmance, the Court of Appeals sustained the constitutionality of the entire Charter including Sections 201 and 203, and Sections 150 and 153(4) of the County Law, and held and enforced Article XII of the Charter, including Sections 1206, 1207 and 1210(a), to appellants' disadvantage while also sustaining Article XII and Sections 1206, 1207 and 1210(a) as constitutional. The judgment of the Court of Appeals necessarily passed on and rejected appellants' constitutional allegations. The judgment of the Court of Appeals was entered on the 28th day of December, 1967. Notice of

appeal was filed by appellants with the clerk of Suffolk County, in the Court of Appeals, in the Appellate Division, Second Judicial Department, and in the Supreme Court, Suffolk County, on the 31st day of January, 1968.

Thus, lying before this Court for review is a judgment of the highest court of the State of New York which has upheld the validity and constitutionality of statutes of the State of New York, namely, the Charter and Sections 150 and 153(4) of the County Law, and which was adverse to appellants' contentions duly made below drawing them into question. This Court, therefore, has jurisdiction to review the judgment of the Court of Appeals by direct appeal, such jurisdiction being conferred on this Court by 28 U. S. Code, Section 1257(2). That this appeal, in both of its phases, lies properly before this Court for review is supported by numerous decisions which are representative of the two phases of this case. The challenge made in the legislative phase of the case to the Charter, including Sections 201 and 203, and to Seetions 150 and 153(4) of the County Law, is fully cognizable under 28 U. S. Code Section 1257(2). The term "statute of any state" used in Section 1257(2) has been held generally by prior decisions of the Supreme Court to embrace any legislative enactment, which the state has sanctioned or passed, not merely statutes of statewide application, such as the County Law Sections being challenged, but enactments, as in the case of the Charter, of purely local application, such as a city or town ordinance (*Reinman* v. *City of Little Rock*, 237 U. S. 171, 35 S. Ct. 511, 59 L. Ed. 900; *Zucht* v. *King*, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194; *Goldblatt* v. *Town of Hempstead, New York*, 369 U. S. 590, 82 S. Ct. 987, 9 L. Ed. 2d 130) or a state bureau or court order (*Sultan Railway & Timber Company* v. *Department of Labor and Industries of State of Washington*, 277 U. S. 135, 48 S. Ct. 505, 72 L. Ed. 820; *Lathrop* v. *Donohue*, 367 U. S. 820, 81 S. Ct. 1826, 6 L. Ed. 2d 1191). Both the

Charter, which is applicable solely to Suffolk County, and the County Law, which applies statewide, are, therefore, statutes of the State of New York within the meaning of 28 U. S. Code Section 1257(2) and, on this appeal, are cognizable by this Court under that Section. The following decisions sustain the jurisdiction of the Supreme Court to review the legislative malapportionment question embodied in the challenge to the Charter and the County Law: *Maryland Committee For Fair Representation* v. *Tawes,* 377 U. S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595; *Avery* v. *Midland County, Texas,* 388 U.S. 902, 87 S. Ct. 2106, 18 L. Ed. 2d 1342, lv. granted, 88 S. Ct. 229. The following decisions sustain the jurisdiction of this Court to review and determine the question also embodied in the legislative apportionment phase of this case of whether the rest of the sections of the Charter are so connected to and dependent upon Sections 201 and 203 that if Sections 201 and 203 are unconstitutional and void the whole Charter is incomplete, must fail and be treated also as unconstitutional and void: *Poindexter* v. *Greenhow,* 114 U. S. 270, 55 S. Ct. 903, 29 L. Ed. 185; *Spraigue* v. *Stern,* 118 U. S. 90, 6 S. Ct. 988, 30 L. Ed. 115; *Dorchy* v. *Kansas,* 264 U. S. 286, 44 S. Ct. 323, 68 L. Ed. 686; *Mayflower Farms, Inc.* v. *Ten Eyck,* 297 U. S. 266, 56 S. Ct. 457, 80 L. Ed. 675. Jurisdiction of this aspect of the case properly may be taken by this Court since the question of whether Sections 201 and 203 are separable from the Charter was not decided by the Court of Appeals, although squarely posed by this case, and hence there is no decision from that court to control this Court.

As to the police phase of this case in which certain Sections of Article XII of the Charter have been drawn into question as being repugnant to the Federal Constitution, particularly the Equal Protection and Due Process Clauses of the Fourteenth Amendment, but have been upheld as valid by a judgment of the highest court in New York, the following decisions sustain the jurisdiction

of this Court to review such judgment: *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 42 S. Ct. 106, 66 L. Ed. 239; *Schroeder* v. *City of New York*, 371 U. S. 208, 83 S. Ct. 279, 9 L. Ed. 2d 255.

Constitutional and Statutory Provisions Involved

The constitutional provisions involved in this appeal are the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

The statutes involved are: Sections 150 and 153(4) of the County Law of the State of New York, the Suffolk County Charter, including Sections 201 and 203 thereof, and Article XII thereof, particularly Sections 1206, 1207(1) and 1210(a); and the Village Law of the State of New York, Sections 34 and 188a.

Said constitutional provisions and statutory provisions are set forth in Appendix A.

Questions Presented

1. Where the Charter was enacted by the State Legislature for the single object of providing a complete scheme of government for Suffolk County and the governmental scheme is dependent upon and keyed to the governing body, the County Board of Supervisors, which not only is made the legislative and policy determining body of the County by Section 201 but has conferred on it powers to make appropriations, levy taxes and appoint department members; and where, by the provisions of Section 201, towns are given representation on the County Board of Supervisors as it is made up of the supervisors of the ten towns of the County; and where, by the provisions of Section 203, each supervisor is given one vote and by a vote of

not less than a majority of all the supervisors, local laws and resolutions may be adopted; and where the five eastern towns of Suffolk County, each with a vote on the County Board of Supervisors equal to the vote possessed by each of the five western towns of the County, are disparate from the western towns: in that (as of 1960 statistics) the five eastern towns contained only 61,048 residents or ten per cent of the population of the County as against 650,736 residents or ninety per cent of the population in the five western towns; in that the five eastern towns, consisting of rural vacant land used mainly for agriculture, paid (as of 1962) only ten per cent of the taxes collected in the County as against ninety per cent paid by the five urbanized western towns with a great variety of land uses and greatest taxable valuations; in that the five eastern towns voted against and are not included in or concerned with the County Police District while the five western towns voted for and are included in said Police District:

a. are Sections 201 and 203 of the Charter violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States as providing and resulting in disparity of representation on the County Board of Supervisors? And, if so,

b. is the entire Charter also rendered inoperative and unconstitutional because the unconstitutional Sections 201 and 203 are so connected with the object of the Charter and the governmental scheme that they are essential to the Charter and inseparable from it and, without them, the other provisions of the Charter cannot effectuate its object and must fail?

c. In view of the above described differences between the five eastern towns and the five western towns and the constitution of the County Board of Supervisors, are Sections 150 and 153(4) of the County Law, in providing that the supervisors of towns and cities in a county shall con-

stitute the board of supervisors of the county and that action shall be taken by the majority vote of the total membership of the board, repugnant to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States because they, too, provide and result in disparity of representation on the County Board of Supervisors?

2. Where, pursuant to Section 1206(2) of the Charter the electors of every incorporated village in Suffolk County were extended the right in 1958 to vote on whether to transfer the police functions of their village to the Suffolk County Police Department and whether to be included or not in the Suffolk County Police District and where Article XII of the Charter is construed, applied and enforced to deny this same right in 1963 to the individual appellants, Robert L. Robertson and Robert E. Link, and other electors similarly situated in the Incorporated Village of Port Jefferson, which was incorporated in 1963, is Article XII of the Charter violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States as favoring the electors of other incorporated villages in Suffolk County by granting them rights not accorded to the individual appellants and other similarly situated electors in the Incorporated Village of Port Jefferson?

3. Where Article XII of the Charter provides in Section 1207(1) that an election made by a town or village in 1958 to transfer its police functions to the Suffolk County Police Department and to be included in the Suffolk County Police District "shall be irrevocable", and where Article XII provides in Section 1210(a) for an annual levy of taxes on real estate within the Suffolk County Police District to pay the expenses of the Suffolk County Police Department; and where Article XII of the Charter is construed, applied and enforced so that the 1958 election by voters of

Police District towns or villages permanently prevents future voters of individual Police District towns and villages, including the individual appellants, from electing to remove themselves from the Police District and from ever voting again on the matter of police functions and police taxes:

a. is Article XII of the Charter violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in that it favors the 1958 class of electors in Police District towns and villages and disfavors post 1958 electors in such towns and villages? And

b. is Article XII of the Charter violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States on the ground that it is arbitrary and unreasonable and deprives the individual appellants of property without due process of law through a permanent form of taxation as to which they have no vote or voice?

4. Where the Village Law of the State of New York forms the Charter of all villages incorporated under it, where the appellant Incorporated Village of Port Jefferson is incorporated under it in 1963, after the Suffolk County Charter became effective in 1960, and where Article XII of the Suffolk County Charter is construed, applied and enforced to supersede and modify the Village Law of the State of New York and to supersede and modify the Charter and rights of the appellant Incorporated Village of Port Jefferson otherwise conferred on it by Sections 34 and 188a of the Village Law and accorded all other villages incorporated in the State of New York, i.e., under Section 34 of the Village Law to cease, on incorporation, to be part of the previously created County Police District and to be paid pro rata taxes collected since incorporation by the appellee County Treasurer for County Police District pur-

poses,* and under Section 188a of the Village Law to exercise police functions and establish a police department within its Village territory, is Article XII of the Suffolk County Charter violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States as discriminating against the appellant Incorporated Village of Port Jefferson and denying to this appellant the rights and the charter conferred on all New York villages by the Village Law under Sections 34 and 188a?

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* In the Courts below, this case was joined with the proceeding entitled "In the Matter of the Application of Paul D. Willcox, as Village Treasurer of the Incorporated Village of Port Jefferson, Appellant, against The County Treasurer of the County of Suffolk, Appellee." This proceeding, based on Article 78 of the Civil Practice Law and Rules of New York and Section 34 of the Village Law, and also Article XII of the Charter, was brought to exercise one of the rights conferred on New York villages by Section 34 of the Village Law: to compel the appellee County Treasurer of Suffolk County to pay to the appellant Village Treasurer in the proceeding pro rata taxes collected from real property within the Incorporated Village of Port Jefferson, since the incorporation of said Village, by said appellee for County Police Department expenses, such payment being required of the appellee by Section 34 of the Village Law. The case and proceeding, having in common as parties, the Incorporated Village of Port Jefferson and its Treasurer and the Suffolk County Treasurer, having in common questions of fact and law and involving the same state statutes, were tried, appealed and decided jointly in the courts below and are included in the record to be filed in this Court. The appellant in the proceeding, directly affected by the judgment of the Court of Appeals as to the operation of Article XII of the Charter on Section 34 of the Village Law and as to the validity of Article XII of the Charter and directly interested in the resolution by this Court of Question 4, is joining in the appeal by appellants in this case.

A brief Jurisdictional Statement in connection with the proceeding, mainly incorporating the statements in this Judicial Statement as they bear on Question 4 presented on this appeal, will follow at the conclusion of this Jurisdictional Statement.

Statement

The appellants, Robert L. Robertson and Robert E. Link, residents, electors, taxpayers and property owners in the Incorporated Village of Port Jefferson and voters in the Town of Brookhaven, and the appellant Incorporated Village of Port Jefferson, commenced this action in Supreme Court, Suffolk County, on December 18, 1963 (R. 257). The action was brought against the County Board of Supervisors and other County and Town officials on behalf of other persons similarly situated in the five western towns of Suffolk County, in the Incorporated Village of Port Jefferson and in villages to be incorporated subsequently in the five western towns (R. 6, 7, 22, App. B, B-1, B-2, B-17).

In their complaint (R. 6-38), reprinted also in Appendix B, appellants alleged in their second cause of action (R. 21-22, App. B, B-15-B-16) and in their third cause of action (R. 22-30, App. B, B-17-B-24) the federal *constitutional* questions described in Questions 1, 2, 3 and 4 above. Question 1 was raised in the legislative apportionment phase of appellants' case while Questions 2, 3 and 4 were raised in the police phase of the case. They were considered and determined adversely in all courts below.

As to Question 1 above:

Raising this Question in the legislative apportionment phase of their action, and specifically by the third cause of action in their complaint (R. 22-30, App. B, B-17-B-24), appellants charged, in substance, that Sections 201 and 203 of the Charter created and provided disparity of representation on the legislative and policy determining body of the County of Suffolk, to wit: the County Board of Supervisors, in violation of the "one person, one vote" principle of *Baker* v. *Carr*, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, and *Reynolds* v. *Sims*, 377 U. S. 533, 84 S. Ct. 362, 12 L. Ed. 2d 506, and in contravention of the Equal Protection

Clause of the Fourteenth Amendment to the Constitution of the United States (and the Equal Protection Clause of the Constitution of the State of New York). Appellants alleged in the third cause of action in their complaint and proved at the non-jury trial held May 4, 1964, in the Supreme Court, Suffolk County, that there were great and glaring disparities between the five eastern and five western towns: only ten per cent of the population of the County, or 61,048 people, resided in the five eastern towns while ninety per cent of the population, or 650, 736 people, resided in the five western towns (R. 24-25, 120, 121; App. B, B-19); of the $109,588,513 in taxes collected from the County in 1962, about ninety percent, or $91,000,000, was paid by the five western towns (R. 124-125; p. 39 entitled "Town and County Property Tax Warrants 1962" of Appellants' Exhibit 16); the greatest taxable valuations were in the five western towns (pp. 7-8 of Appellants' Exhibit 16); there was a greater urbanization in the five western towns, density, and a variety of land uses than in the preponderantly agricultural five eastern towns, outside of Greenport, which were relatively rural, consisting of vacant, sparsely populated land lacking urbanization (R. 25, 123, 125-128; Appellants' Exhibit 17, pp. 13-22, map at pp. 30-31, entitled "Existing Land Use—1962" and map at pp. 29-30, entitled "Usable Open Space—1962"; App. B, B-19); the five western towns only voted for and were included in the County Police District (R. 24-25, 180, App. B, B-19). Appellants alleged and established that the makeup of the County Board of Supervisors is such that it is not and cannot be responsive to Police District matters and the needs of ninety per cent of the population of the County, such as requests from the five western towns for a revote, or as to their need for court facilities, or other matters (R. 20-27, 140, 142, 145-147, 231, Appellants' Exhibit 22; App. B, B-20-B-21). By virtue of the provisions of Sections 201 and 203 of the Charter, each of the elected supervisors from the ten towns of the County constitutes the County Board of Supervisors, has one equal vote, repre-

sents his town, not the population of the County, as to county matters, and each town represented by him has equal representation regardless of its population, needs or inclusion in the County Police District (R. 25, 137-138, App. B, B-19-B-20). In consequence of the composition and structure of the County Board of Supervisors, representation therein was grossly and unjustifiably disproportionate to the distribution of voting population, debased appellants' votes and other similarly situated in the five western towns, placed them in a position of constitutionally unjustifiable inequality and contravened the Fourteenth Amendment to the Constitution of the United States (R. 26-28, App. B, B-20-B-22). Appellants charged that Sections 201 and 203 of the Charter, which created the malapportioned governmental scheme, violated the Federal Constitution (R. 29-30, App. B, B-23-B-24). Appellants further charged that, since these Sections 201 and 203, which constitute, authorize and empower the governing body of Suffolk County, and prescribe its functions and voting procedure, are inseparable from the rest of the sections of the charter, since they are inextricably interwoven with the object of the Charter to provide a comprehensive governmental scheme for Suffolk County whose operation and success are keyed to the County Board of Supervisors created by Sections 201 and 203, as is apparent from an examination of the title, section and plan of the Charter, the balance of the section of the Charter fall and the whole of the Charter falls and is also unconstitutional and void if Sections 201 and 203 are unconstitutional and eliminated (R. 24, 28, 30, 221, 222, Appellants' Exhibit 14, App. B, B-18, B-22, B-24).

Still in the legislative apportionment phase of the action, the appellants also alleged that Sections 150 and 153(4) of the County Law, in similarly creating disparity of representation on the County Board of Supervisors, violated the "one person, one vote" principle and the Equal Protection Clause of the Federal Constitution (and the Equal Protection Clause of the State Constitution) (R. 23, 25-28, 29-30, App. B, B-18, B-20-B-22, B-23-B-24).

The prayer for relief, in this phase of the case, sought judgment declaring the entire Charter, including Sections 201 and 203, void, invalid and unconstitutional in violation of the Fourteenth Amendment and asked that appellees be restrained from exercising their powers under the unconstitutional Charter (R. 33-34, App. B, B-27-B-28). The same declaratory judgment and injunctive relief was asked as to Sections 150 and 153(4) of the County Law (R. 33-34, App. B, B-27-B-28).

The appellees Board of Supervisors and County Treasurer served their answer (R. 38-41). In paragraphs 11th and 13th of their answer (R. 40), they admitted the appellants' allegations in paragraph 38 of the complaint that Sections 201 and 203 of the Charter and the voting and other powers conferred on the County Board of Supervisors by said Sections are interwoven with and are essential to the entire scheme of the Charter (R. 24, App. B, B-18) and they admitted the allegations of paragraph 46 of the complaint that Sections 201 and 203 are inseparable from the remainder of the Charter (R. 28, App. B, B-22). Their answer, however, denied the invalidity and unconstitutionality of Sections 201 and 203 and the Charter and of the challenged Sections of the County Law (R. 40). The answer of appellee Receiver of Taxes (R. 41-43) denied appellants' allegations in this and other respects. The appellees, in all courts below, including the trial court, the Appellate Division and the Court of Appeals, contended in briefs and arguments that these statutes did not violate the Fourteenth Amendment, so that the constitutional issues were always in sharp focus before the courts below.

After the trial, the trial judge, in an opinion dated December 18, 1964, reported in 44 Misc. 2d 1083, 256 N.Y.S. 2d 36, recognized the constitutional issue raised by the complaint and involved in Question 1. He said at one point in the opinion: "As a third cause of action . . . the plaintiffs seek a declaration of the unconstitutionality of Sections 150 and 153(4) of the County Law and the entire

Suffolk County Charter, because of the disproportionate voting strength of the town supervisors on the County Board of Supervisors. This they claim constitutes a violation of the due process and equal protection clauses of both the State and Federal Constitutions." (R. 237-238); and he said at another point in the opinion: "In the third cause of action the court is asked to declare unconstitutional Sections 150 and 153(4) of the County Law and the entire Charter, particularly Sections 201 and 203, and 1206, 1207, and 1210(a) thereof, as being violative of the due process and equal protection clauses of both State and Federal Constitutions . . ." (R. 246). However, the trial judge held in favor of the constitutionality of the Charter and the challenged Sections of the County Law (R. 250) against the contentions of appellants.

Subsequently, on the appeal to the Appellate Division recognition again was given to the constitutional issue presented by Question 1 as well as the issue, also presented by this Question, of whether the unconstitutionality of Sections 201 and 203 results in the failure and unconstitutionality of the entire Charter. The Appellate Division, whose opinion is reported in 26 A. D. 2d 700, 272 N.Y.S. 2d 617, went to some pains to describe appellants' contentions: "that sections 201 and 203 of the County Charter (which deals with the constitution and voting procedure of the Board of Supervisors) are invalid because they violate the one-man, one-vote principle; that the invalidity of these sections makes the whole charter invalid, including Article XII, under which the County Police District was created; that the invalidity of the entire charter, including Article XII, makes section 34 of the Village Law the controlling statute; and that pursuant to that section the village ceased to be part of the County Police District when the village was incorporated." (R. 269). The Appellate Division, whose opinion will be remarked upon later, rejected appellants' contentions and upheld the constitutionality of the entire Charter and Sections 201 and 203 thereof.

As to Questions 2, 3 and 4 above:

In the other phase of this action, dealing with the rights of the individual appellants, Robert L. Robertson and Robert E. Link, and the appellant Incorporated Village of Port Jefferson, with respect to the police functions of said Village and police taxes imposed by appellees under Article XII, Section 1210(a), of the Charter, appellants charged in the second cause of action of the complaint * (R. 21-22, App. B, B-15-B-16), and also proved at the trial: that pursuant to Article XII of the Charter the County Police Department was created, effective January 1, 1960, to consist of the five western towns, including the Town of Brookhaven, and the villages therein and that the electors of all villages, at a 1958 referendum and pursuant to Section 1206(2) of the Charter, were afforded the right to vote on whether to transfer the police functions of their villages to Suffolk County Police Department and become part of the County Police District (R. 7-12, 19, 180, App. B, B-3-B-7, B-14); that on April 10, 1963, a part of the Town of Brookhaven became incorporated under the Village Law of the State of New York as the appellant Incorporated Village of Port Jefferson which Village was entitled to all the rights conferred on villages organized thereunder (R. 6-7, 11, 13, App. B, B-2, B-6, B-8), particularly to the right conferred by Sections 34 and 188a of the Village Law, Section 34 providing, in part, that a new village, on incorpora-

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* This second cause of action, in paragraph 32 of the complaint (R. 21, App. B, B-15), repeated all statements and allegations made in the first cause of action. By the first cause of action (R. 6-21, App. B, B-1-B-15) appellants invited the courts below to avoid the constitutional questions concerning Article XII of the Charter and to grant the relief requested (R. 30-32, App. B, B-25-B-26) that the Incorporated Village of Port Jefferson was not part of the County Police District, not subject to taxation under Section 1210(a) of the Charter, was empowered to establish a police department, and that appellants were entitled to the same right to vote other village electors had. The courts below denied this relief, reached and adversely determined the constitutional questions presented by the second cause of action.

tion, should cease to be part of a previously created municipal district and providing further that the treasurer of a county must pay to the treasurer of the village taxes collected since incorporation for municipal district purposes, and Section 188a providing that a village was empowered to exercise its police functions and establish a police department in its territory (R. 13-14, 15-16, App. B, B-8-B-9, B-10-B-11); that when the appellant Incorporated Village of Port Jeffreson became incorporated it ceased to be included in the County Police District, that its electors had the same right of election that was afforded all village electors to determine whether to transfer village police functions and become part of the County Police District, and that the electors of the Incorporated Village of Port Jefferson voted on October 17, 1963, not to transfer police functions to the County Police Department and not to become part of the County Police District (R. 14-15, 19, 96-97, 106-107, 164-165, 177-178, 202-216, App. B, B-9-B-10, B-14). Appellants alleged that no real property in the Incorporated Village of Port Jefferson, including that owned by individual appellants Robert L. Robertson and Robert E. Link, was subject to taxation for annual county police department expenses levied and collected by appellees pursuant to Section 1210(a) of the Charter and that said Section did not apply to the real property owned by appellants and others in the Incorporated Village of Port Jefferson (R. 14-15, 165-166, 178-179, App. B, B-9). On October 24, 1963, the Board of Trustees of the Incorporated Village of Port Jefferson resolved to establish a police department pursuant to Section 188a of the Village Law (R. 16, 108, 109, 216-220, 167, 179, App. B, B-11) which resolution was served on appellees (R. 17, 97, 167). Appellees refused to concede the position of the appellant Incorporated Village of Port Jefferson and asserted their intention to oppose said appellant (R. 17, App. B, B-12) and usurped the police functions of said appellant (R. 17, App. B, B-12) and performed them in the territory of said appellant against its

wishes (R. 99) and continued to levy taxes pursuant to Section 1210(a) of the Charter against real property owned by the individual appellants and others in said Village (R. 17-19, 165-166, 178-179, App. B, B-12-B-13).

On the basis of these allegations and proofs, appellants raised Questions 2, 3 and 4 by the second cause of action in the complaint, charging: that if Article XII of the Charter was held and applied in such manner as to deprive appellants Robert L. Robertson and Robert E. Link, and others similarly situated, as electors in the Incorporated Village of Port Jefferson, of an equal right and opportunity to vote on the question of whether to transfer police functions and become part of the County Police District as were extended to all other electors of incorporated villages, Article XII would be violative of the Fourteenth Amendment; or if Article XII of the Charter which provides in the last sentence of Section 1207(1) that a town or village election is "irrevocable" was held and enforced in such manner that appellants Robert L. Robertson and Robert E. Link and other similarly situated electors in the Incorporated Village of Port Jefferson are permanently precluded by the vote of 1958 electors from making an election as to inclusion in the County Police District or as to having their real property subjected to taxation under Section 1210(a) from County Police Department expenses, Article XII again would be violative of the Fourteenth Amendment; or if Article XII of the Charter were held and applied in such manner as to prevent the appellant Incorporated Village of Port Jefferson from exercising the rights, under Section 34 of the Village Law, to cease being part of the County Police District and to have repaid to its Treasurer taxes collected for municipal district purposes, and, under Section 188a of the Village Law, the right to establish its own police department, rights which were accorded to all villages in New York under the Village Law, Article XII again would be violative of the Fourteenth Amend-

ment. The prayer for relief, under the second cause of action, sought judgment declaring that the Charter, and the Sections of Article XII, to wit: Sections 1206, 1207 and 1210(a), were void, invalid and in violation of the Constitution of the United States if held and applied in any of the ways just described (R. 32-33, App. B, B-26-B-27). The complaint also sought judgment permanently restraining appellees from acting under Section 1210(a) of the Charter to levy and collect taxes against appellants' and others' property in the Incorporated Village of Port Jefferson to pay the annual expenses of the County Police Department (R. 31-32, App. B, B-25-B-26).

The answers of the appellees denied (R. 39, 43) the allegations of the unconstitutionality of Article XII of the Charter if held and enforced to appellants' disadvantage; however, the answer of the appellee Receiver of Taxes (R. 41) nevertheless admitted the allegations of paragraph 2 of the complaint (R. 6-7, App. B, B-2), that the appellant Incorporated Village of Port Jefferson, incorporated under the Village Law, was entitled to all the rights and powers and privileges conferred on villages organized thereunder.

The trial judge recognized in his opinion appellants' constitutional objections made by the second cause of action. His language was: "For a second cause of action, in the event that it is determined that the Village is still a part of the county police district, they ask that the Suffolk County Charter, particularly Sections 1206, 1207 and 1210(a) thereof which have to do with the creation, establishment and support of the Suffolk County Police District, be declared invalid as being violative of both the State and Federal Constitutions in many respects . . ." (R. 237). In another portion of the opinion, recognition again was given to the constitutional issues (R. 242-243). The trial judge went on to decide that appellants' contentions were without merit (R. 244-246).

On appeal, the Appellate Division, in these words also showed an awareness of the constitutional issues presented by appellants and involved in questions 2, 3 and 4: "Alternatively, plaintiffs contend . . . that even if the rest of the charter is valid, Article XII thereof (dealing with the County Police District) is unconstitutional for a variety of reasons, and that said section 34 consequently is controlling. . . . We see no merit in any of the attacks on article XII of the Charter on constitutional grounds" (R. 269-270).

From the adverse judgment of the trial court dismissing the complaint, including all its causes of action, appellants appealed to the Appellate Division, Second Judicial Department, and reasserted before the Appellate Division, in oral argument and briefs, as they had in arguments, trial and briefs before the trial court, their constitutional arguments and objections and the same constitutional questions now presented on this appeal. The Appellate Division, however, resolved all constitutional questions against appellants, and sustained the constitutionality of Article VII, though applying and enforcing it to the disadvantage of appellants, and sustained the constitutionality of the entire Charter. It did not decide that or whether Sections 201 and 203 were severable from the rest of the Charter, no express language or implication to this effect appearing in the opinion. In affirming the judgment of the lower court, which had held Sections 201 and 203 of the Charter and the entire Charter valid and constitutional and also sustained the validity and constitutionality of Sections 150 and 153(4) of the County Law, the Appellate Division necessarily decided adversely to appellants' contentions and upheld the constitutionality of all of these statutes as well. A word, however, will be said in the next paragraph concerning Section 203 of the Charter which the Appellate Division's opinion apparently conceded to be invalid but which concession, as appellants see the Appellate Division opinion in retrospect, probably has been erased so that Section 203, as far as the opinion of the Appellate Division is concerned, was held valid.

From the order of the Appellate Division, appellants appealed to the Court of Appeals where the same contentions made in the two courts below were made once more and the constitutional questions posed and presented again. The Court of Appeals delivered no opinion. Its judgment, however, in affirming the order of the Appellate Division which had affirmed the judgment of the Supreme Court, Suffolk County, was adverse to appellants and the constitutional contentions made by appellants. Necessarily the Court of Appeals considered the constitutional questions raised and the constitutional rights asserted by appellants and necessarily it resolved against them and determined that the entire Chafter, including Sections 201 and 203 thereof, was constitutional and valid, that Sections 150 and 153(4) of the County Law were constitutional and valid and that Article XII of the Charter was also constitutional and valid even though applied and enforced to the disadvantage of appellants. When, on or about November 1967, the appeal came before the Court of Appeals, this Court had already vacated the judgment of the three judge court in *Bianchi* v. *Griffing* (387 U. S. 97, 87 S. Ct. 1544, 18 L. Ed. 643). The vacatur of the three judge court judgment occurred on April 18, 1967, after the Appellate Division had rendered its opinion of July 12, 1966. It had been on the basis of the prior ruling of the *Bianchi* three judge court (238 F. Supp. 997, app. dism. 382 U. S. 15, 86 S. Ct. 52, 15 L. Ed. 2d 11) that Section 203 of the Charter was invalid as violative of the "one person, one vote" principle that the Appellate Division appeared forced to concede the invalidity of Section 203, for the Appellate Division expressly referred to this ruling (R. 270) and recited the direction of the three judge court to the County Board of Supervisors to reapportion as the reason for conceding the invalidity of Section 203. In their brief to the Court of Appeals, appellees argued that by vacating the judgment of the three judge court, this Court "re-

versed" the three judge court and that Section 203 (and also Section 201 of the Charter and the County Law) was valid and constitutional.* The judgment of the Court of Appeals against appellants' contentions to the contrary leads to the conclusion that the Court of Appeals accepted appellees' argument, regarded the Appellate Divisions' earlier concession of Section 203's invalidity as erased by the later vacatur of the three judge court judgment by this Court and viewed Section 203 as constitutional, as it also viewed the other statutes challenged by appellants. The Court of Appeals did not, impliedly or expressly, make any decision as to the separability of Sections 201 and 203 from the remainder of the Charter; and hence no state court decision controls this Court on the point.

At every stage and in every court below, appellants duly made their objections and posed the federal constitutional questions now before this Court. This appeal is properly before this Court.

The Questions are Substantial

All questions posed by this appeal are of overriding significance to every citizen of the United States since these questions affect the composition, procedure, representative character, rights, functions and charters of local governments under whose immediate jurisdiction he lives and works.

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* Following the direction of the *Bianchi* three judge court, the County Board of Supervisors, on August 8, 1966, adopted Local Law No. 4-1966 purporting to amend the Suffolk County Charter by creating the positions of additional representatives on the County Board and providing for calculating the vote the representatives of each town would have. The Local Law was adopted by the voters on November 8, 1966. However, Section 3 of the Local Law provided that it was to be deemed rescinded if the United States Supreme Court overruled the decision and order of the District Court. Since, according to the appellees and the County Attorney, the Supreme Court has "reversed" the three judge court, the Local Law, which purported to amend the Charter and reapportion the County Board of Supervisors, has been voided by its own terms.

As to Question 1:

This Question raises the dual issue of whether the Equal Protection Clause of the Fourteenth Amendment and the "one person, one vote" principle is applicable to legislative elective bodies at the municipal and county level and requires them, in particular, a county board of supervisors, to be apportioned according to the number of citizens represented and whether, if the Equal Protection Clause of the Fourteenth Amendment does apply to elected county and municipal governments, and the provisions of their Charters dealing with the composition of these bodies are held void and repugnant to the Fourteenth Amendment as providing for the unconstitutional apportionment of these governmental bodies, the remainder of their charters purporting to supply a complete system of government can or should be preserved as a workable system of government or a system of government intended by the state legislature with the key provisions relating to the legislative body eliminated and the object of the charter frustrated.

The initial issue concerning the applicability of the Equal Protection Clause to elected county government has not yet been resolved by this Court. Appellees in this case maintained before the Court of Appeals that this Court's decision in *Sailors* v. *Board of Education*, (387 U.S. 105, 87 S. Ct. 1549, 18 L. Ed. 2d 650) determined that the Equal Protection Clause did not apply to such state governmental bodies, and to the county governmental body in this case, and that, therefore, Sections 201 and 203 of the Charter were not repugnant to the Fourteenth Amendment. The briefest examination of this case shows this contention to be fallacious as applied to this appeal wherein the County Board of Supervisors is an elected, legislative body. In *Sailors* this Court decided only that the "one person, one vote" principle did not apply to an appointive, rather than elective, county school board which performs non-legislative functions. Further, in *Sailors*,

Mr. Justice Douglas expressly reserved the question whether the "one person, one vote" principle applies to a local legislative body, the very issue now brought up on this appeal. Therefore, this issue continues to be undetermined by this Court, and it is obvious from the fact that this Court granted certiorari in *Avery* v. *Midland County, Texas, supra*, in which a federal constitutional question was raised in connection with the apportionment of a county body, that this issue is considered by this Court to be of importance. If (and it is a big "if" for reasons set forth in the footnote) this Court resolves in the *Avery* case the issue of whether local legislative bodies are governed by the Equal Protection Clause, the decision will greatly affect the initial issue brought up by this appeal. Appellants therefore waited as long as they dared for a decision in that case before preparing this Jurisdictional Statement but, as the prescribed time limit for docketing this appeal and filing this Jurisdictional Statement approached its end, appellants could not delay further. Hence, as of the writing of this Jurisdictional Statement, the *Avery* case still is awaiting decision. However, as indicated in the footnote,* there are good reasons to doubt if

* For two reasons, it may be doubted whether the question raised by the *Avery* case will be resolved finally by this Court: 1. The governmental body of Midland County, Texas, may not be a legislative one but an administrative one to which the Equal Protection Clause does not apply under *Sailors* v. *Board of Education, supra*, the Supreme Court of Texas having described the Midland County body as "the commissioners court" whose primary function "is the administration of the business affairs of the county" and whose "legislative functions are negligible" (406 S.W. 2d 422, 426); 2. The Supreme Court of Texas reversed the judgments below and remanded the cause to the trial court to enter another judgment. The judgment of the Texas state court, therefore, may be determined ultimately by this Court not to be a final one under 28 U.S. Code Section 1257 in the sense that will sustain a writ of certiorari (see, e. g., *Brown* v. *Marion National Bank*, 146 U.S. 619, 13 S. Ct. 260, 36 L. Ed. 1106).

the issue of whether the Equal Protection Clause applies to an elected county legislative body will be determined by the *Avery* case. That issue may first reach this Court and be resolved through this appeal.

Appellants are not unmindful of *Bianchi* v. *Griffing, supra,* which has been before this Court before and which also attempted to attack Sections 201 and 203 of the Charter as malapportioning the governing body of Suffolk County and to present the issue of whether the Equal Protection Clause of the Fourteenth Amendment applies to that governing body. In that case, after the three judge court had resolved the issue in the affirmative, held that the Equal Protection Clause applied to the County Board of Supervisors and that Sections 201 and 203 of the Charter violated the Fourteenth Amendment, this Court vacated the judgment of the three judge court and remanded the case to the District Court for a fresh decree (387 U. S. 97, 87 S. Ct. 1544, 18 L. Ed. 2d 643). This Court, however, did not "reverse" the three judge court on the merits, as appellees argued below, or consider the constitutional issues on the merits, or hold that the three judge court was incorrect in its holding. The vacatur of the three judge court judgment was solely on jurisdictional grounds, this Court holding that the Charter attacked by complaint, not being of statewide application but only applying to Suffolk County, was not a "State statute" within the meaning of 28 U. S. Code Section 2281, that the three judge court was not authorized or properly convened and that this Court had no jurisdiction over the decision of the three judge court under 28 U. S. Code Section 1253. The instant appeal, of course, does not suffer from the same jurisdictional defects that plagued the *Bianchi* case. This appeal challenges Sections 150 and 153(4) of the County Law, a statute of statewide application, which the complaint in the *Bianchi* case did not do. This appeal, which also challenges the Charter, which is not of application statewide, comes to this Court not resting on 28 U. S. Code Section

2281 and Section 1253 but resting on 28 U. S. Code Section 1257(2) whose phrase "statute of any state", as was pointed out earlier at page 4, has been held consistently to encompass every act legislative in character, including acts which do not have application statewide but affect only local matters. The meaning of "statute of any state", the term used in 28 U. S. Code Section 1257(2) is quite different from "State statute" used in 28 U. S. Code Section 2281. The Equal Protection issue tendered by this appeal, therefore, is not only properly cognizable by this Court but is a highly important issue that still remains unresolved by this Court. Since the remand by this Court of the *Bianchi* case to the District Court, the *Bianchi* complaint has been dismissed by the District Court by a decision dated June 29, 1967 (271 F. Supp. 497), which is now (as of the writing of this Jurisdictional Statement) being appealed to the United States Court of Appeals for the Second Circuit. It is questionable whether, if appealed to this Court, it will reach this Court prior to appellants' case. Hence, assuming that the issue is not resolved by the *Avery* case for reasons outlined previously, it probably will be the burden of appellants' case to bring to this Court; for the first time on the merits, the fundamental issue of whether the Equal Protection Clause of the Fourteenth Amendment applies to local elected legislative bodies. This is the question which this Court did not have before it in the case of *Sailors* v. *Board of Education, supra,* and in which case this Court said that it would "reserve the question for other cases such as *Moody* v. *Flowers* (*Board of Supervisors* v. *Bianchi*), 386 U. S. —, 87 S. Ct. 1544 which we have disposed of on jurisdictional grounds." (387 U. S. 105, 87 S. Ct. 1549, 1551). Moreover, it should be noted that, while this appeal is, in its third cause of action, a case like the *Bianchi* case, it is also unlike the *Bianchi* case: the complaint in this case does not allege only population disparity as did the now dismissed *Bianchi* complaint, dismissed by the District Court

on the ground that population disparity alone, absent other factors, is not enough to render the County governmental system unconstitutional. In this complaint and in this appeal there was alleged, not only alleged but proved at the trial, that there were many more factors of difference between the western and eastern towns besides population differences; there were differences in taxable valuations, tax burdens and payments; differences in land uses and characteristics; differences in urbanization; differences in County Police District concerns; and it was shown that the County Board members are town representatives and that the governmental scheme of the County Board is such that it does not respond to the requirements of the five western Police District towns. Appellants' allegations and proof at the trial made out a prima facie case of invidious discrimination and required appellees to show that a rational basis existed for the disparities and the malapportionment (*Moss* v. *Burkhart*, 207 F. Supp. 885, app. dism. 374 U. S. 103). But appellees failed to make any showing whatever.

This Court's early resolution of the Equal Protection issue is necessary. It is needed to clear away all doubts regarding the validity of Sections 201 and 203 of the Charter. As indicated above at page 21, the Appellate Division, in this case (R. 270), appeared to indicate that Section 203 was invalid, but this was based on the June 15, 1966, ruling and direction of the *Bianchi* three judge statutory court ruling it invalid—whose judgment this Court later vacated. In their brief to the Court of Appeals, appellees reiterated contentions made by them in the Appellate Division and trial, that Sections 201 and 203 of the Charter were not violative of the Equal Protection Clause of the Fourteenth Amendment and that the constitutional standards required by the Fourteenth Amendment of state legislatures do not apply to sub-state legislative bodies. In the Court of Appeals, appellees also maintained that the *Bianchi* case, on which appellants

had relied in the Appellate Division and to which the Appellate Division referred in its opinion, had been overruled not only because "the Supreme Court reversed the lower court" (to quote from page 13 of appellee's brief to the Court of Appeals) when this Court vacated the decree of the three judge court, but also when the District Court, by Hon. Walter R. Bruchhausen, J. (271 F. Supp. 497), after remand by this Court, dismissed the *Bianchi* case on June 29, 1967, for failure to state a cause of action and thereby brought about a "reversal of his original opinion" (to quote again from appellees' brief to the Court of Appeals, p. 7). Appellees concluded that not only was Section 201 constitutional, and the entire Charter constitutional, but that Section 203 was constitutional, made so by the Supreme Court and District Court "reversals" rendered after the Appellate Division's opinion. The Court of Appeals expressed no opinion, but, by its judgment adverse to appellants, evidently took the view that this Court did "reverse" the three judge statutory court, evidently accepted appellees' contentions and conclusions and, by necessity, rejected appellants' contentions and conclusions to the contrary and upheld the validity and constitutionality of Sections 201 and 203 and the rest of the Charter. By taking jurisdiction of this appeal and reversing the Court of Appeals, this Court can make plain what it did when it vacated the judgment of the *Bianchi* three judge court and can correct the erroneous views and judgment of the Court of Appeals as to the constitutionality of the Charter. Moreover, there are now over one million persons residing in Suffolk County with the major increase in population, as might be expected, taking place in the five western towns which are nearest to the City of New York and the first to receive its suburban-bound residents. The disparity of representation on the County Board of Supervisors has worsened since this action was commenced over four years ago and the disparity has deepened and the discrimination

against appellants and other voters in the five western towns has continued, as appellants charged originally in their complaint (R. 27-28, App. B, B-22). Only by considering this appeal and by an adjudication reversing the Court of Appeals can this Court eliminate the inequality of representation now being endured by over ninety per cent of the population of the County.

Question 1 also tenders to this Court a second issue of a significance at least as weighty as the issue relating to the applicability of the Equal Protection Clause to local elected legislative bodies: whether a Charter, intended to form and forming a single scheme of local government centered on an elected body, which contains constitutionally objectionable provisions essential to the existence and operation of the governmental scheme which create, constitute and empower the elected body, is null, void and unconstitutional in its entirety. This issue has never presented to this Court by the *Bianchi* case, nor by any of the legislative apportionment cases which this Court has adjudicated so far, nor will it be brought up or be resolved by the *Avery* case even if this Court decides that it has jurisdiction of the case and that the Equal Protection Clause applies to the Texas county body. If this Court determines in *Avery* that local elected governments, constituted and granted powers by local charters, are subject to the same constitutional standards now demanded of state legislatures under the Equal Protection Clause so that the provisions of their Charters, relating to their creation, composition, proceedings and powers are unconstitutional, then the very serious constiutional problem now presented by this appeal will recur repeatedly as to whether the partial invalidity of their charters renders their charters wholly invalid. It is a problem to face every malapportioned local governing body with a charter in each state, county, city and town and is a problem most serious and important to all citizens of the United States within the jurisdiction of the malapportioned body.

This Court's consideration and determination of the problem will resolve it and provide needed guidance for all United States citizens and their local governing bodies.

As to Questions 2, 3 and 4:

These Questions 2, 3 and 4 are of pressing importance not only for the appellant Incorporated Vilage of Port Jefferson and the individual appellants who are electors in it but for all villages to be incorporated in the future in the five western towns in Suffolk County and their electors, on whose behalf this action was brought also (R. 6, App. B, B-1). The decision of the Court of Appeals in affirming the Appellate Division and thereby sustaining the validity of Article XII of the Charter and applying it to supersede and modify the Village Law and charter of villages incorporated and to be incorporated subsequent to 1960 is not correct yet may have far reaching effects which may touch and undermine local governments in and out of the State of New York. Within New York, it gives subsequently incorporated villages in Suffolk County and their electors lesser voting rights than, and a charter different from, other villages incorporated in Suffolk County prior to 1960 and lesser police powers and functions than villages in other counties of the State of New York—all in contravention of the Equal Protection Clause of the Fourteenth Amendment. This decision, if erroneously followed in other states, will reduce the rights of local electors and the charters and functions of other villages or local governments similarly incorporated subsequent to the creation of a municipal district, will destroy their equality vis-a-vis earlier incorporated local governments and will destroy the autonomy of the villages and their jurisdiction within their own territory to provide police or other services. We do not understand that the Questions 2, 3 and 4 raised by this case have ever been resolved by prior decisions of this Court, but we believe that they ought to be because

of their constitutional significance and serious practical consequences for all municipal governments in each state and locality and the citizens of the United States who live under their jurisdictions.

CONCLUSION

For the reasons stated, the federal constitutional questions brought up by this appeal are substantial and of pressing importance to the public. Probable jurisdiction should be noted in this case so that the questions presented may be resolved after plenary consideration of the case on the merits.

Respectfully submitted,

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